



LABOR & EMPLOYMENT DEPARTMENT

# ALERT

## NEW JERSEY SUPREME COURT RULING IN LEWIS V. HARRIS: IMPLICATIONS FOR EMPLOYEE BENEFITS

Recently, the New Jersey Supreme Court ruled that same-sex couples are entitled to all of the rights and benefits heterosexual couples get through civil marriage. The court's ruling in Lewis v. Harris gave the New Jersey State Legislature 180 days to revise the marriage laws to either follow the lead of states like Vermont, and give same-sex couples all of the benefits of marriage under a different name, or follow Massachusetts' lead, and recognize same-sex marriage. Regardless of the path the Legislature chooses, the court's ruling raises a whole host of employment and benefit issues for employers to think about.

### **Pension Plans**

The court's ruling will not effect profit sharing plans, 401(k) plans, defined benefit pension plans, or cash balance plans, which are all governed by the Employee Retirement Income Security Act ("ERISA"). ERISA is subject to the Defense of Marriage Act ("DOMA"), which for the purposes of federal statutes and regulations, defines "marriage" as occurring only between one man and one woman, and "spouse" as only referring to those members of the opposite sex. Given that that DOMA precludes same-sex couples from the definition of marriage, and ERISA (a federal statute) preempts state law, there is no obligation to extend these types of benefits to same-sex couples. Should an employer choose to provide these benefits to same-sex partners, they must add the amount paid out as taxable income on their employee's W-2 forms.

### **Medical Benefits**

Medical benefits are also implicated by the court's decision. Self-insured health plans are governed solely by

federal law, and consequently, there is no obligation to extend benefits to employees' same-sex partners under such plans. However, insured health plans are subject to state insurance laws that are not preempted by ERISA. Accordingly, insured plans issued in New Jersey – thus subject to New Jersey state law – may be required to extend any spousal benefits they may offer to same-sex partners. However, extending this coverage to same-sex partners will mean that because of DOMA, the amount of coverage will be includable in the employee's gross income, and considered wages for employment tax purposes.

### **Family and Medical Leave**

Leave issues will also become more complicated. Under the Family Medical Leave Act ("FMLA"), federal law entitles employees to 12 weeks of unpaid leave for the care of a spouse, child or parent. Meanwhile, the New Jersey Family Leave Act ("NJFLA") entitles employees to leave for the care of a spouse, parent, parent-in-law, or child. As discussed above, DOMA requires a spouse to be an individual of the opposite sex. Thus, employers will likely be required to provide leave for the care of same-sex partners under the NJFLA, but such leave cannot run concurrently with the leave provided by the FMLA.

### **Company Provided Benefits**

Company benefit plans that provide benefits to "spouses," such as bereavement leave, will likely also be required for same-sex partners. As a result, policies that provide bereavement benefits for the death of a spouse would, in New Jersey, require employers to provide such benefits for the death of same-sex partners.

**Miscellaneous Benefits**

As a result of the court's ruling, there is likely to be an onslaught of new issues that employers will need to consider with regard to same-sex partners. Indeed, Judge Albin, writing for the majority of the court, indicated that court's ruling would extend same-sex partners the right to survivor's benefits under New Jersey Workers' Compensation law, as well as back wages owed to a deceased same-sex partner.

Though some companies have already provided benefits to same-sex partners, once the legislation has passed, many companies will likely have to re-examine their existing benefit and pension policies in order to act in accordance with new legislation. We will keep you updated as the Legislature makes its decision.

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